Step Up and Vote: Be Ready for the August Deadline

By Theodore Rothschild

Few among us would dispute that publicly held companies are the lifeblood of our economic and financial systems, or that as practitioners in the securities industry we have a considerable stake, not only in the continued success of these businesses, but also in earning the faith of both investors and beneficiaries. In the current environment of shareholder disillusion, the accountability of corporate boards to their shareholders has become a hot-button issue – with the role of shareholder voting rights under the spotlight.

Increasing scrutiny within the investment community, from both regulators and special interest groups, has resulted in strong pressure on investment managers to ensure that they vote all meetings and publicize their votes. All funds are now facing an August 2004 deadline to publish their voting record for the period of July 3, 2003 to July 3, 2004.

However, the looming deadline, the media obsession with market practices, and quirks in the global voting process contain the ingredients for error and confusion. Global custodians should be well positioned to help clients understand the process and its inherent weaknesses, and to identify whether a particular issue is within or beyond the control of the voter and/or the chain of agents that support the owner/voter.

The questions that follow may be used to evaluate your position or to form the basis for further discussion.

Q: What is the investment manager's responsibility?

U.S. regulation requires that U.S. investment managers publicize their voting policies and voting records for any public fund, with data collected from July 2003 to July 2004, to be reported by August 3, 2004.

Although managers are required to disclose their record of voting as well as their general policies, they are not required to demonstrate that any individual company accurately accepted the vote.

The fund and/or its investment managers are not and cannot be held accountable for the actions of a company in which it invests with regard to that company's procedures regarding proxy votes.

Q: What is the definition of "disclosure" as it pertains to the manager's responsibilities?

It means your disclosure of your own policy and follow-through on your position. However, it doesn't mean that you're responsible for what the issuing company does or doesn't do with the voting results.

If, for a variety of reasons, your vote may not have been counted, keep in mind that disclosure rules are about the action *your firm* has taken, not the action that took place at the issuing company. Just be sure to use a custodian who follows the appropriate procedures to submit your vote, because the voting is important above and beyond your policy and intention.

Q: What if I don't vote my policy?

If you're worried about regulatory bodies reconciling your actual vote back to your stated policy, your concerns are misplaced. Your real concern is the press and the investors, who will definitely be reconciling your disclosure back to your policy. Public opinion will be the deciding factor, especially with omnibus registration.

Q: Wouldn't it be easier to vote directly?

The process for proxy voting is relatively simple. An issuer of a security announces a meeting and relevant agenda. This information is processed via the sub-custodian/ global custodian chain of communications with information (meeting details and agenda) being "pushed out" from sub-custodian to beneficial owner via the global custodian. The subsequent vote follows the chain back via the global custodian to the local sub-custodian and ultimately to the issuer.

But efforts to "vote direct" (from the beneficial owner to the issuer, skipping the custodial chain) all fail or become mired in complication because securities are registered with respect to the global custodian ownership chain in order to facilitate settlement, reconciliation and other forms of asset servicing such as dividend payments.

The solution is omnibus registration, which both shields the privacy of the individual investor and creates large processing efficiencies that improve the proxy process.

The global custodian maintains two agreements, the first with the client, making the custodian responsible for delivery of information and processing of votes. The second agreement, with the sub-custodian, makes that party also liable for information and the processing of votes – and for reporting that information quarterly. If the proxy vote was not accepted by a local company, the sub-custodian must notify the global custodian who will alert the client.

Q: What is the responsibility of the global custodian regarding the impediments to foreign registration?

Leading custodians can lobby both directly and indirectly to influence foreign market practice and legislation. Network managers can leverage the sub-custodian network to participate directly in negotiations with local authorities. In France, for example, our representatives were repeatedly invited to discuss and comment on pending legislation that ultimately led to the end of "wet" signature requirements and lengthy blocking periods.

Through efforts such as these, and by participating in industry initiatives like the International Corporate Governance Network, founded to bridge the gap between corporate management and shareholders, global custodians can work to create more standard procedures and practices in all the significant capital markets.

In summary, our goal is to support responsible corporate governance by facilitating the procedures that recognize the investors' right to vote, anywhere in the world.

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